

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

MYRON HARGREAVES,
CORTNEY HALVORSEN, and
BONNIE FREEMAN,

Plaintiffs,

V.

ASSOCIATED CREDIT SERVICE,
INC., a Washington Corporation, and
PAUL J. WASSON AND MONICA
WASSON, individually and the
marital community,

Defendants.

NO. 2:16-CV-0103-TOR

ORDER ON DEFENDANTS'
MOTION TO DISMISS FOR
FAILURE TO STATE A CLAIM OR
ALTERNATIVE MOTION FOR
PARTIAL SUMMARY JUDGMENT

BEFORE THE COURT is Defendants' Motion to Dismiss for Failure to

State a Claim or Alternatively Motion for Partial Summary Judgment. ECF No.

18 56. This matter was heard with oral argument on October 19, 2017. The Court has
19 reviewed the motion, the record and files herein, and is fully informed. For the

1 reasons discussed below, Defendants' Motion for Partial Summary Judgment (ECF
2 No. 56) is **GRANTED**.¹

3 **BACKGROUND**

4 This case concerns a claim against Defendant Associated Credit Services,
5 Inc. (Associated), a Washington debt collection agency. ECF No. 56 at 3. On
6 April 1, 2016, Plaintiff Myron Hargreaves filed a putative class action, asserting
7 violations of the Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. § 1692 *et*
8 *seq.*; the Washington Consumer Protection Act (WCPA), RCW § 19.86.010 *et*
9 *seq.*; and the Washington Collection Agency Act (WCAA), RCW § 19.16.100.

10 *See* ECF No. 1. On November 16, 2016, Plaintiff Hargreaves, along with Courtney
11 Halvorsen and Bonnie Freeman, filed a First Amended Complaint adding
12 Defendants Paul J. Wasson and Monica Wasson (Wasson Defendants). ECF No.
13 14.

14 In the instant motion, Defendants² seek an order dismissing Plaintiffs'
15 "reason to believe claims," which refer to Defendants allegedly, falsely certifying

16 ¹ The Court need not address Defendants' Motion to Dismiss, as the Court
17 grants Defendants' Motion for Partial Summary Judgment.
18

19 ² Wasson Defendants filed this Motion, which Associated later joined. ECF
20 No. 61.

1 that they had reason to believe the assets they were attempting to garnish were not
2 exempt. ECF Nos. 56 at 2; 14 at ¶ 7.13. Alternatively, Defendants request partial
3 summary judgment for failure to state a claim under Federal Rules of Civil
4 Procedure 8(a) and 12(b)(6) and that there are no disputed questions of fact that
5 preclude a finding that Mr. Wasson lawfully executed each application for writ of
6 garnishment. ECF No. 56 at 2. For the reasons discussed below, the Court grants
7 Defendants' Motion for Partial Summary Judgment as there are no disputed
8 material questions of fact.

9 **FACTS**

10 Plaintiffs allege that judgment creditor, Associated, and its attorney, Mr.
11 Wasson, misrepresented information in writs of garnishment, which allowed them
12 to unlawfully garnish Plaintiffs' exempt property in violation of the FDCPA. ECF
13 No. 14 at ¶ 7.13. Plaintiffs contend that Associated and Mr. Wasson's conduct
14 also violates the WCPA and the WCAA. *Id.* at 18.

15 All available funds were garnished from Plaintiffs' respective bank accounts
16 to repay consumer debts, pursuant to a writ of garnishment filed by Defendant
17 Associated. ECF No. 14 at ¶¶ 4–6. Mr. Wasson executed declarations on behalf
18 of Associated in support of each writ application and asserted that Associated had
19 "reason to believe" that Plaintiffs' property "was not exempt under Washington or
20 federal law." *Id.* at ¶ 1. Plaintiffs contend that Mr. Wasson is the equivalent of a

1 “robo-signer” who signs numerous writ applications without any reason to believe
2 the veracity of the statements he makes. *Id.* at ¶¶ 4.27, 7.9, 7.11. Defendants
3 allegedly sent notices of exemption rights to Plaintiffs post-garnishment that
4 contained materially false and misleading information concerning Plaintiffs’
5 respective cash exemption rights.³ *Id.* at ¶¶ 4.30, 5.12, 6.19–6.20. After Plaintiffs
6 Cortney Halvorsen and Bonnie Freeman confronted Defendants in response to the
7 erroneous exemption claim notice, Defendants released their respective writs of
8 garnishment and paid back some or all of the garnished money. *Id.* at ¶¶ 5.14,
9 6.22.

10 A recitation of Washington State’s garnishment law and procedures is
11 necessary to understand the intricacies of this case. The Washington Legislature
12 declared its intent with respect to garnishment:

13 The legislature recognizes that a garnishee has no responsibility for
14 the situation leading to the garnishment of a debtor’s wages, funds, or
15 other property, but that the garnishment process is necessary for the
16 enforcement of obligations debtors otherwise fail to honor, and that
17 garnishment procedures benefit the state and the business community
18 as creditors. The state should take whatever measures that are
19 reasonably necessary to reduce or offset the administrative burden on

20³ This conduct of allegedly sending false and misleading information
concerning Plaintiffs’ exemption rights is not before the Court on this motion for
partial summary judgment.

1 the garnishee consistent with the goal of effectively enforcing the
2 debtor's unpaid obligations.

3 RCW 6.27.005. Judgment creditors who have judgments that are wholly or
4 partially unsatisfied are entitled to seek writs of garnishment. *See* RCW 6.27.020.
5 Application for a writ of garnishment must be by affidavit stating, *inter alia*, that a
6 judgment is unsatisfied, the amount due, and that "plaintiff has reason to believe,
7 and does believe that the garnishee, . . . is indebted to the defendant in amounts
8 exceeding those exempted from garnishment by any state or federal law. . ."

9 RCW 6.27.060 (quoting third necessary fact). In the context of the garnishment
10 statutes and this case, plaintiff is the creditor, defendant is the debtor and the
11 garnishee is the bank holding funds belonging to the defendant. Upon proper
12 application, the clerk of the court issues a writ of garnishment to the judgment
13 creditor for service upon the garnishee. *See* RCW 6.27.070.

14 The writ of garnishment shall set forth the amount that the garnishee is
15 required to hold pending the garnishment proceeding. *See* RCW 6.27.090. This
16 amount is determined by adding together the amounts specifically allowed by
17 statute, which includes the amount of the unsatisfied judgment, interest, attorney
18 fees and taxable costs. *Id.* Nowhere does the statute require the creditor or the
19 Court to deduct any anticipated exempt property that *may* later be claimed.

1 After service of the writ and notice, a defendant debtor “*may* claim
2 exemptions from garnishment in the manner specified by the statute that creates
3 the exemption. . . .” RCW 6.27.160(1) (emphasis added). A creditor *may* object to
4 the claimed exemption, in which case the court must hold a hearing where the
5 debtor “bears the burden of proving any claimed exemption”. RCW 6.27.160(2).
6 The creditor is then entitled to a judgment against the garnishee for any amount
7 exceeding the proven exemption, or if no exemption is claimed, the amount the
8 garnishee holds up to the amount due on the unsatisfied debt, including interest,
9 attorney fees and costs. *See* RCW 6.27.250(1). These are the relevant provisions
10 of state garnishment law that impact the resolution of this case.

11 DISCUSSION

12 A. Partial Summary Judgment

13 Summary judgment is appropriate when “there is no genuine dispute as to
14 any material fact and the movant is entitled to judgment as a matter of law.” Fed.
15 R. Civ. P. 56(a). In ruling on a motion for summary judgment, the court views the
16 facts, as well as all rational inferences therefrom, in the light most favorable to the
17 non-moving party. *Scott v. Harris*, 550 U.S. 372, 378 (2007). The court must only
18 consider admissible evidence. *Orr v. Bank of America, NT & SA*, 285 F.3d 764
19 (9th Cir. 2002).

1 The moving party bears the initial burden of showing the absence of any
2 genuine issues of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323
3 (1986). The burden then shifts to the non-moving party to identify specific facts
4 showing there is a genuine issue of material fact. *Anderson v. Liberty Lobby, Inc.*,
5 477 U.S. 242, 256 (1986). There must be evidence on which a jury could
6 reasonably find for the plaintiff and a “mere existence of a scintilla of evidence in
7 support of the plaintiff’s position will be insufficient.” *Id.* at 252. Additionally, a
8 fact is “material” if it might affect the outcome of the suit under the governing law.
9 *Id.* at 248. A material fact is “genuine” where the evidence is such that a
10 reasonable jury could find in favor of the non-moving party. *Id.*

11 **1. FDCPA**

12 Defendants move for summary judgment to dismiss Plaintiffs’ “reason to
13 believe” claims under the FDCPA. ECF No. 56 at 11. The parties dispute the
14 interpretation of the “reason to believe” requirement of RCW 6.27.060. ECF No.
15 79 at 8. The interpretation of a statute is a question of law. *See Miranda v.*
16 *Anchonda*, 684 F.3d 844, 849 (9th Cir. 2012). Plaintiffs concede in oral argument
17 that this issue is a legal question that must be decided by the Court.

18 At oral argument, both parties admit that there is no relevant case law
19 defining “reason to believe.” Plaintiffs contend the Defendants must have “reason
20 to believe” that a bank account contains more than \$500, an amount allowed to be

1 exempted by RCW 6.15.010 and know the nature or source of those funds.
2 Plaintiffs argue the unfairness of allowing the garnishment to freeze the first \$500
3 (which may be claimed exempt) and the length of time it takes to resolve the
4 exemption claim.

5 Defendants argue there is “no legal requirement to have complete certainty
6 regarding what is in the debtor’s bank account prior to garnishment and it is the
7 debtor’s obligation to assert exemptions after service of a writ.” *Id.* Defendants
8 emphasize that a “creditor must have some grounds, cause or basis that leads them
9 to think or suppose that the bank account contains some non-exempt funds.” ECF
10 No. 56 at 13 (quotation omitted). At oral argument, Plaintiffs contended that the
11 standard is greater than knowing that a debtor might have a job and a bank
12 account.

13 The Court finds that Defendants satisfied the “reason to believe” standard
14 through their sworn testimony. ECF Nos. 58, 59. The Court determines that it is
15 sufficient for Defendants to find that a debtor is employed and has a bank account,
16 or has a bank account and does not know or have reason to believe that that the
17 debtor’s account is only comprised of Social Security benefits or some other totally
18 exempt source. Under various privacy laws like the Gramm-Leach-Bliley
19 Financial Modernization Act, 15 U.S.C. § 6801, et seq., financial institutions must
20 respect the privacy of their customers’ nonpublic personal information.

1 Accordingly, Defendants cannot access the debtor's account balances before
2 issuing the writ of garnishment, and the negligible "reason to believe" standard
3 accommodates this limitation. It is then sufficient for Defendants to believe
4 Plaintiffs had funds in their bank accounts exceeding those exempt from
5 garnishment without requiring more specificity as to the exact amount or nature of
6 those funds. Accordingly, the Court finds that Defendants meet the "reason to
7 believe" standard.

8 The Court observes that the first \$500 in every bank account is not exempt
9 from garnishment, but rather *may* later be claimed to be exempt by the debtor.
10 Indeed, a debtor may claim up to \$3,000 in exempt personal property, of which not
11 more than \$1,500 may be exempt cash, and of which not more than \$500 may be
12 exempt value in a bank account, savings and loan accounts, stocks, bonds, or other
13 securities, regardless of the number of existing accounts. *See* RCW 6.15.010.

14 Plaintiffs concede at oral argument that once the Court decides the legal
15 question there are no genuine issues of material fact left. Plaintiffs assert that the
16 Court can then determine whether or not Defendants' "reason to believe" was
17 adequate. Plaintiffs offer no additional facts that would call into question Mr.
18 Solberg's or Mr. Wasson's affidavits in any material matter. Accordingly, on these
19 undisputed facts, the Court finds that Defendants' "reason to believe" was
20

1 adequate and there are no genuine issues of material fact remaining. The Court
2 grants Defendants' Motion for Partial Summary Judgment.⁴

3 **2. WCAA**

4 Defendants argue that the WCAA does not create a private cause of action
5 and so Plaintiffs' WCAA claim should be dismissed. ECF No. 56 at 18. "The
6 remedy for a violation of the WCAA is through the WCPA." *Gray v. Suttel &*
7 *Associates, P.S.*, No. 2:09-CV-251-RMP, 2016 WL 409706, at *4 (E.D. Wash.
8 Feb. 2, 2016) (citation omitted). The Supreme Court of Washington determined
9 that "[w]hen a violation of debt collection regulations occurs, it constitutes a per se
10 violation of the CPA ... under state and federal law." *Panag v. Farmers Ins. Co.*
11 *of Washington*, 166 Wash.2d 27, 53 (2009). The Eastern District of Washington
12 concluded that an individual cannot assert a private cause of action under the
13 WCAA, but that the attorney general or the local prosecuting attorney may bring
14 the action. *Gray*, 2016 WL 409706, at *4. At oral argument, Plaintiffs agreed that
15 the WCAA is not an independent cause of action and Plaintiffs did not object to
16 having it dismissed as an independent cause of action. Accordingly, the Court
17 grants Defendants' Motion for Summary Judgment on the WCAA claim.

18
19

⁴ The FDCPA statutory damages claim is not disputed in this Motion and
20 remains.

1 **3. WCPA**

2 Defendants contend that Plaintiffs' "reason to believe" claims brought under
3 the WCPA fail because Plaintiffs did not make a sufficient showing of unfair or
4 deceptive acts and actual injury. ECF No. 56 at 18–19. At oral argument,
5 Plaintiffs stated that their WCPA cause of action is only based on their contention
6 that Defendants did not have sufficient "reason to believe." Plaintiffs admit that if
7 the Court rules on the "reason to believe" standard in favor of Defendants, then the
8 WCPA action should also be dismissed. Since the Court has found that
9 Defendants had adequate "reason to believe," the WCPA claim is also dismissed.
10 Therefore, the Court grants Defendants' Motion for Partial Summary Judgment in
11 regards to the WCPA claim.

12 **ACCORDINGLY, IT IS HEREBY ORDERED:**

13 Defendants' Motion to Dismiss for Failure to State a Claim or Alternatively
14 Motion for Partial Summary Judgment (ECF No. 56) is **GRANTED**.

15 The District Court Executive is directed to enter this Order and furnish
16 copies to counsel.

17 **DATED** October 20, 2017.



18 A handwritten signature in blue ink that reads "Thomas O. Rice".
19 **THOMAS O. RICE**
20 Chief United States District Judge